



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request to Join in Amicus Brief in the case of Border Business Park, Inc. v. City of San Diego, Court of Appeal, Fourth District, No. D039225.

MEETING DATE: September 4, 2002

PREPARED BY: Randall A. Hays, City Attorney

RECOMMENDATION: That the City join the Amicus Brief in the case of Border Business Park, Inc. v. City of San Diego.

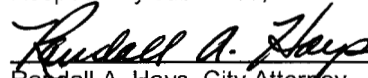
BACKGROUND: Amicus Briefs are filed in various actions, which involves matters of wide-ranging concern to provide information and additional argument to the Court in order to assist the Court in understanding all of the issues and arrive at a conclusion.

This is an appeal from a State Trial Court ruling which found San Diego liable for approximately \$100 million dollars in damages for inverse condemnation based on 1) San Diego's activities relating to its planning for a possible international airport to be located near a property owners property; and 2) San Diego's activities relating to the rerouting of commercial traffic onto public streets adjacent to the same property owner's property in order to reach a federal border crossing. The rerouting of the traffic was necessary due to the closing of a border crossing previously used. The particular decision in this case brings into serious question planning activities of a community. Certainly we all understand that there are requirements that a city plan for the future. In this case, San Diego did nothing more than undertake a study of a proposed airport which could have impacted the property owner if the airport project had proceeded forward. The Court however found that this planning activity alone constituted inverse condemnation activities on the part of the City of San Diego. The second situation is one which basically was required for the City to do, due to the relocation by the federal government of a border crossing from the closed San Ysidro border crossing to the new Otay Mesa border crossing. Since San Diego had jurisdiction over the public streets leading to the new Otay Mesa border crossing, San Diego was forced to deal with the question of how to best redirect traffic. After studying various alternatives a route was picked that put traffic near the property owner's property. Interesting enough, the property owner bought the property and entered into a development agreement with San Diego for the placement of an industrial business park. However, having traffic diverted near their property was claimed to have damaged that property. Again the City of San Diego was found to have engaged in conduct that constituted inverse condemnation.

The primary purpose of the amicus brief will be to explain to the Court of Appeals the potential impact its decision would have on the action of municipalities throughout California. It will also discuss legal standards a Court should use determining a municipality is liable under inverse condemnation when its actions or inactions have adverse impacts on private property with no physical invasion.

Funding: Not applicable.

Respectfully submitted,


Randall A. Hays, City Attorney

APPROVED: _____


H. Dixon Flynn -- City Manager